

**APPLICANTS:**  
**David & Kimberly Miller**

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5392**

**REQUEST:**  
**Variance to enlarge an existing garage**  
**within the side yard setback**

**HEARING DATE: February 4, 2004**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** David & Kimberly Miller

**LOCATION:** 812 Stone Haven Drive – Rocks Acres  
Tax Map: 33 / Grid: 1C / Parcel: .0358 / Lot: 9  
Third Election District

**ZONING:** AG / Agricultural

**REQUEST:** A variance pursuant to Section 267-34C, Table II, of the Harford County Code, to enlarge an existing attached garage within the 20 foot side yard setback in an Agricultural District (17.5 foot setback proposed).

#### **TESTIMONY AND EVIDENCE OF RECORD:**

David W. Miller, a Co-Applicant, testified that he and his wife wish to enlarge their one-car garage located to the right side of their house, to a two-car garage. Next to their present one car garage they have placed a free standing storage shed. The Applicants wish to use the additional garage for parking, and for storage to take the place of the existing storage shed.

The new garage would be built on the southeast side of the property, or to the right of the house as one was looking at the house from Stone Haven Drive. The Applicant testified that his lot falls off very sharply on the left side of the house, and it is not practical to build in that location. Mr. Miller testified that it would not be economical to attempt to build a garage, or any addition, on the left side of his house. In order to construct the new garage Mr. Miller would be impacting the 20 foot side yard setback by approximately 3 feet.

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Mr. Miller testified he had performed a survey of the neighborhood. Approximately 14 homes have two-car garages, 3 homes have a one-car garage, and one house has no garage. Mr. Miller relied upon these statistics in stating that a two-car garage is normal for the neighborhood.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune, and the Department feel that the subject property is unique in that it has significant topographical constraints to the left or northwest side of the property. The ground slopes very sharply down and away from the house which would make it difficult, and certainly impractical, to construct an addition in that area. The only available practical location is to the right, or southeast side of the house. Photographs are attached to the Staff Report of the topography of the lot.

Mr. McClune verified that the majority of the homes in the subject property's subdivision have 2 car garages. The variance requested would allow the Applicants to impact the 20 foot side yard setback by 3 feet. Mr. McClune believes that the proposed location is the most reasonable one for the garage. Appropriate landscaping would mitigate its impact. This would cause no adverse impact to any neighbor or the neighborhood.

In opposition testified Alvin H. Banthem, Sr., 810 Stone Haven Drive, Jarrettsville, Maryland. Mr. Banthem lives next door to Mr. and Mrs. Miller, on the side on which the Applicants propose to erect the new, expanded garage.

Mr. Banthem testified that the neighborhood is a small development and he believed that a violation of the side yard setback would impact his property values, and would have an adverse impact to the value and quality of the neighborhood. He also believes that the granting of the variance would set a bad precedent. He was concerned that the existing distance between he and Mr. and Mrs. Miller be maintained.

Upon questioning, Mr. Banthem stated that he does not object to the location of the existing shed. He also stated that he would not object if the enlarged garage came no closer to Mr. Banthem's property than does the existing shed.

Mr. Miller was then invited to address this issue. Mr. Miller stated that the shed was to be removed, and that the new garage would not come as far over as does the existing shed. In fact, the garage would be approximately a foot or more farther removed from the Banthem property.

Mr. Banthem then expressed his lack of opposition, as long as the garage was located as testified to by Mr. Miller.

There was no other testimony in opposition.

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### **APPLICABLE LAW:**

Section 267-34C, Table II, of the Harford County Code, requires an attached garage to maintain a 20 foot side yard setback.

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicants have shown that their lot is unique due to its relatively severe topographical feature on its left side, being the side opposite that on which is now located the Applicants' one-car garage. While it would appear that a garage could, in fact, be built on the left side, its construction would be highly impractical due to this fairly severe topographical feature. Most of the other homes in the neighborhood have two-car garages and, accordingly, do not appear to be so impacted.

As a result of the unique circumstance, the Applicants are unable to build a two-car garage without the requested variance. They propose to impact the side yard setback by approximately 3 feet which, in fact, is somewhat less than the impact now caused by the storage shed located in that area.

The adjoining neighbor, Mr. Banthem, who is understandably concerned about any threat to his property value, agreed at the hearing that the removal of the shed, and the construction of a garage farther from his property line, would be acceptable. It would appear that the construction of an attached 2 car garage, in keeping with the appearance of the Applicants' house would be a more acceptable, and have less impact than does the existing wooden storage shed.

Other than the concerns of Mr. Banthem, which can be addressed by appropriate conditions, there is no showing of any adverse harm to the neighborhood, or to the purposes of the Zoning Code if the variance were granted. It is also found that the variance requested is the minimum necessary to alleviate the hardship suffered by the Applicants as a result of their lot's unusual topographical feature.

### **CONCLUSION:**

For the above reasons it is recommended that the requested variance be granted, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the construction of the garage.
2. The garage shall only be used for the personal use of the Applicants.
3. The Applicants shall not use the garage for the storage of commercial vehicles and/or contractors equipment.
4. The garage shall not be used in the furtherance of a business.

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5. The construction, materials and appearance of the garage be in harmony with the existing house and garage.
6. Landscaping shall be installed between the garage addition and the adjacent property owned by Mr. and Mrs. Banthem. Landscaping shall be designed to mitigate the impact of the variance on the property of Mr. and Mrs. Banthem, and shall be submitted to the Department of Planning and Zoning for its review and approval.
7. No structure of any kind, or other improvement, shall be located in the area between the new garage addition and the property of Mr. and Mrs. Banthem. The existing shed shall be either permanently removed, or placed in some other area of the Applicants' property provided, however, that it is placed no closer than 20 feet from the Banthem property.

Date: February 25, 2004

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner